

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 686

H.P. 467

House of Representatives, March 3, 2015

An Act To Promote Privacy in Social Media

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PIERCE of Falmouth.
Cosponsored by Senator BREEN of Cumberland and
Representatives: FARNSWORTH of Portland, WARREN of Hallowell.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA c. 7, sub-c. 1-C** is enacted to read:

3 **SUBCHAPTER 1-C**

4 **EMPLOYEE SOCIAL MEDIA PRIVACY**

5 **§615. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 **1. Applicant.** "Applicant" means an applicant for employment.

9 **2. Employee.** "Employee" means an individual who provides services or labor for
10 an employer for wages or other remuneration.

11 **3. Employer.** "Employer" means a person in this State who employs individuals and
12 includes the State and political subdivisions of the State. "Employer" includes a person
13 acting in the interest of an employer directly or indirectly.

14 **4. Social media account.** "Social media account" means an account with an
15 electronic medium or service through which users create, share and view user-generated
16 content including but not limited to videos, still photographs, blogs, video blogs,
17 podcasts, instant and text messages, e-mail, online service accounts and Internet website
18 profiles and locations. "Social media account" does not include an account opened at an
19 employer's behest or provided by an employer or intended to be used primarily on behalf
20 of an employer.

21 **§616. Prohibitions**

22 An employer may not:

23 **1. Passwords.** Require or coerce an employee or applicant to disclose, or request
24 that an employee or applicant disclose, the password or any other means for accessing a
25 personal social media account;

26 **2. Access in presence.** Require or coerce an employee or applicant to access, or
27 request that an employee or applicant access, a personal social media account in the
28 presence of the employer or an agent of the employer;

29 **3. Information; exceptions.** Require or coerce an employee or applicant to disclose
30 any personal social media account information, except when reasonably believed to be
31 relevant to an investigation of allegations of employee misconduct or a workplace-related
32 violation of applicable laws, rules or regulations and when not otherwise prohibited by
33 law, as long as the information disclosed is accessed and used solely to the extent
34 necessary for purposes of that investigation or a related proceeding;

1 4. **Contacts.** Require or cause an employee or applicant to add anyone, including
2 the employer or an agent of the employer, to the employee's or applicant's list of contacts
3 associated with a personal social media account;

4 5. **Settings.** Require or cause an employee or applicant to alter, or request that an
5 employee or applicant alter, settings that affect a 3rd party's ability to view the contents of
6 a personal social media account;

7 6. **Employees.** Discharge, discipline or otherwise penalize or threaten to discharge,
8 discipline or otherwise penalize an employee for the employee's refusal to disclose or
9 provide access to information as specified in subsection 1, 2 or 3 or for refusal to add
10 anyone to the employee's list of contacts associated with a personal social media account
11 as specified in subsection 4 or to alter the settings associated with a personal social media
12 account as specified in subsection 5; or

13 7. **Applicants.** Fail or refuse to hire an applicant as a result of the applicant's refusal
14 to disclose or provide access to information specified in subsection 1, 2 or 3 or refusal to
15 add anyone to the applicant's list of contacts associated with a personal social media
16 account as specified in subsection 4 or to alter the settings associated with a personal
17 social media account as specified in subsection 5.

18 **§617. Exceptions**

19 1. **Publicly available information.** This subchapter does not apply to information
20 about an applicant or employee that is publicly available.

21 2. **Duty to screen or supervise.** This subchapter does not prohibit or restrict an
22 employer from complying with a duty to screen employees or applicants before hiring or
23 to monitor or retain employee communications that is established by a self-regulatory
24 organization as defined by the federal Securities Exchange Act of 1934, 15 United States
25 Code, Section 78c(a)(26) or under state or federal law, regulation or rule to the extent
26 necessary to supervise communications of regulated financial institutions or insurance or
27 securities licensees for banking-related, insurance-related or securities-related business
28 purposes.

29 **§618. Penalties for violations**

30 In any civil action alleging a violation of this subchapter, the court may:

31 1. **Declaratory relief, damages and costs.** Award to a prevailing applicant or
32 employee declaratory relief, damages and reasonable attorney's fees and costs; and

33 2. **Injunctive relief.** Award injunctive relief against an employer or an agent of an
34 employer who commits or proposes to commit a violation of this subchapter.

35 **SUMMARY**

36 This bill protects the social media privacy of employees and applicants for
37 employment.

1 The bill prohibits an employer from requiring or coercing an employee or applicant to
2 disclose, or requesting that an employee or applicant disclose, the password or any other
3 means for accessing a personal social media account. It also prohibits an employer from
4 requiring or coercing an employee or applicant to access, or requesting that an employee
5 or applicant access, a personal social media account in the presence of the employer or an
6 agent of the employer. It also prohibits an employer from requiring or coercing an
7 employee or applicant to disclose any personal social media account information, except
8 when the employer reasonably believes it to be relevant to an investigation of allegations
9 of employee misconduct or a workplace-related violation of applicable laws, rules or
10 regulations but only when not otherwise prohibited by law. In that situation, the employer
11 may access the information and use it solely to the extent necessary for purposes of that
12 investigation or a related proceeding.

13 The bill prohibits an employer from requiring or causing an employee or applicant to
14 add anyone, including the employer or the agent of the employer, to the employee's or
15 applicant's list of contacts associated with a personal social media account. It also
16 prohibits an employer from requiring or causing an employee or applicant to alter, or
17 requesting that employee or applicant alter, settings that affect a 3rd party's ability to
18 view the contents of a personal social media account.

19 The bill prohibits an employer from taking adverse action against an employee or
20 applicant who refuses to take part in actions that the employer is prohibited from taking.
21 It allows a court in a civil action to award a prevailing plaintiff declaratory relief,
22 damages and reasonable attorney's fees and costs and injunctive relief against an
23 employer or the agent of the employer.

24 The new subchapter does not apply to information about an applicant or employee
25 that is available to the public.

26 The new subchapter does not prohibit or restrict an employer from complying with a
27 duty to screen employees or applicants before hiring or to monitor or retain employee
28 communications that is established by a self-regulatory organization as defined by the
29 federal Securities Exchange Act of 1934, 15 United States Code, Section 78c(a)(26) or
30 under state or federal law, regulation or rule to the extent necessary to supervise
31 communications of regulated financial institutions or insurance or securities licensees for
32 banking-related, insurance-related or securities-related business purposes.